

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff

vs.

JAMAL D. HOLDMAN,

Defendant.

8:21CR193

PLAINTIFF'S SENTENCING
MEMORANDUM AND RESPONSE IN
OPPOSING (IN PART) DEFENDANT'S
MOTION FOR VARIANCE

Plaintiff, United States of America, by and through the undersigned Assistant United States Attorney for the District of Nebraska, offers its sentencing memorandum in advance of the hearing scheduled for April 12, 2023, at 11:00 a.m. Plaintiff requests that the Court accept the Plea Agreement (Filing No. 89) for the reasons set forth in this Memorandum.

A. Procedural History.

The Grand Jury returned an indictment naming Jamal Holdman as a defendant on July 21, 2021. (Filing No. 13). His initial appearance and arraignment were held on August 26, 2021. (Text Minute Entry No. 27). On October 28, 2022, the Court set a change of plea hearing for the defendant which was held on November 29, 2022. (Text Minute Entry Nos. 64, 72). On the latter date, pursuant to a plea agreement (Filing No. 76), Holdman entered guilty pleas to Count I and VII of the Indictment. A sentencing hearing is scheduled for April 6, 2023. (Filing No. 29).

The Court adopted the Magistrate Judge's Findings and Recommendations on Plea of Guilty (Filing No. 73), found the defendant guilty, and accepted the plea on August 18, 2022. (Filing No. 97). On March 2, 2022, the Court granted Plaintiff's Motion for Preliminary Order of Forfeiture. (Filing Nos. 100, 101).

Defendant filed a motion for downward variance and brief on February 10, 2023. (Filing Nos. 94, 95). Plaintiff opposes Defendant's motion in part and responds as follows.

B. Plaintiff opposes Defendant's Motion for Variance, in part.

Plaintiff has implicitly agreed that a variance is appropriate by agreeing to cap Count 1 at 24 months' imprisonment, just over a year below the low end of defendant's advisory guideline range. As further discussed in Defendant's brief (Filing No. 94), Plaintiff has not only considered the defendant's personal characteristics and the nature and circumstances of the offense, but also the need to avoid unwarranted sentence disparities among the defendants. Under the parties' agreement, the defendant will be held accountable for both the firearm found in his bedroom and his involvement in the dark web drug distribution scheme. The conviction of the 924(c) offense will no doubt result in more serious consequences to the defendant over time, long after he is released from prison.

While defendant describes himself as a "pharmaceutical deliveryman", there can be no doubt that the distribution of addictive pharmaceutical drugs such as oxycodone and hydrocodone has directly fueled the national opioid epidemic. Oxycodone and hydrocodone were the primary drugs distributed by the defendant and Nicolas Decosta through their dark net marketplaces. More concerning, however, was law enforcement's seizure of counterfeit M30 pills, which resemble legitimate oxycodone 30mg pills but, as in this case, are often found to contain fentanyl. Fentanyl is approximately 100 times more potent than morphine (also available through the defendants' "pharmacy", and 50 times more potent than heroin as a painkiller. Under these circumstances, defendant does not deserve consideration for any more of a variance than what is already accounted by way of the plea agreement.

C. Conclusion.

Plaintiff asserts the agreed upon capped sentence as to Count 1, with the consecutive mandatory minimum sentence to 60 months as to Count 7, is sufficient to address the § 3553(a) factors. Plaintiff therefore requests the Court accept the plea agreement and deny defendant's motion for a variance to the extent that it drops below what is effectively an agreement to an 84-month cap. Plaintiff will request a sentence of imprisonment to 84 months.

UNITED STATES OF AMERICA

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CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and by e-mail to: Michael J. Hansen, Counsel for Defendant. I further certify that a copy of the same has been served by e-mail to the following non-CM/ECF participants:

Jessica Curd
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s/ Christopher L. Ferretti
Assistant U.S. Attorney